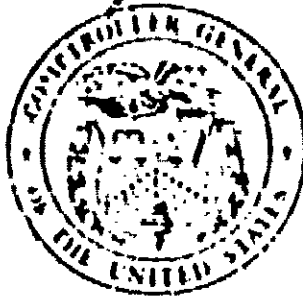


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DECISION



Gibson
**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-203680.2

DATE: March 4, 1982

MATTER OF: Pepsi-Cola Bottling Company of Salina, Inc.--
Reconsideration

DIGEST:

1. Where a protest disputing agency's determination of nonresponsiveness is dismissed as academic based on the agency's cancellation of solicitation, and GAO subsequently learns that the cancellation was based on a determination that only the "responsive" bids received were unreasonably high, GAO will consider the protest as it is clear that protest issue is not academic.
2. Agency properly found bid nonresponsive where protester's alteration of the bid schedule made it unclear whether item required by invitation for bids would be furnished. Where bid is subject to two reasonable interpretations, under one of which it is nonresponsive, bid must be rejected.

Pepsi-Cola Bottling Company of Salina, Inc., requests that we reconsider our decision, Pepsi-Cola Bottling Company of Salina, Inc., B-203680, September 22, 1981, 81-2 CPD 237. In its protest Pepsi argued that the Department of the Army had improperly rejected its bid to supply beverages at Fort Riley, Kansas, as nonresponsive under invitation for bids (IFB) No. DAKF19-81-B-0033. We concluded that the question was academic and dismissed the protest without considering the merits because after the protest was filed, the Army advised us that the solicitation had been canceled based on the contracting officer's determination that both bids received were unreasonably high. The Army's requirement was subsequently

resolicited, and Pepsi was not the low bidder. Since it is now clear that our dismissal of Pepsi's protest was based on a factual misunderstanding, we now consider the protest on the merits. For the reasons stated below, however, it is denied.

Pepsi challenges our conclusion that its protest was academic, claiming that the prices it bid on the original solicitation were not unreasonable, and that the solicitation therefore should not have been canceled. Pepsi renews its contention that its bid under the original solicitation was in fact responsive and that it was entitled to the award as the low responsive bidder.

After our decision was issued, we learned that the Army's cancellation of the solicitation was based not on a determination that both bids received were unreasonably high but that "all responsive bids" were unreasonably high. Since Pepsi's bid had been declared nonresponsive, that determination did not pertain to the Pepsi bid. Thus, the Army's cancellation had two bases: (1) Pepsi's bid was nonresponsive and (2) the remaining bid was unreasonably high. No party has challenged the Army's determination that the price contained in the bid considered responsive was unreasonably high. Pepsi does, however, dispute the Army's view that its low bid was nonresponsive. It is clear, therefore, that the Army's cancellation of the solicitation did not render Pepsi's protest academic and we must consider its merits.

Pepsi's original bid was found nonresponsive because it offered to supply root beer as one of its beverages instead of the grape soda required by the IFB and because it did not contain prices for line item 0007. In its initial protest submission, Pepsi claimed that someone in the contracting office orally authorized Pepsi to substitute root beer for grape soda. In its request for reconsideration, Pepsi argues that it bid "both root beer and grape as alternates" at no extra charge and thus its bid should have been accepted.

Item 0002 of the bid schedule was for "Grape Beverage, Class 7, Type II." In Pepsi's bid the word "Grape" was crossed out and the words "root beer" were inserted immediately above the item description. The beverage classification was not altered. Attachment 1 to the solicitation stated that a "Class 7" beverage is grape soda.

It is not clear from the face of Pepsi's bid under item 0002 whether root beer or grape was offered. There is no indication in the IFB that substitutions or alternate bids were solicited. The schedule simply required a bid on grape soda.

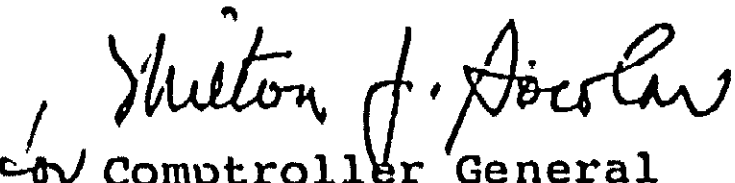
To be responsive, a bid as submitted must represent an unequivocal offer to supply the exact items called for in the solicitation. See Garney Companies, Inc., B-196075.2, February 3, 1981, 81-1 CPD 62. Under these circumstances, Pepsi's bid was, at best, ambiguous as to whether the beverage to be furnished under item 0002 would include grape soda. Where, as here, a bid is subject to two reasonable interpretations, under one of which it is nonresponsive, the bid should be considered nonresponsive and be rejected. Data-Chron, Inc., B-196801, July 29, 1980, 80-2 CPD 78.

Pepsi, however, maintains that its insertion of root beer was orally approved by the contracting office. As a general rule, a bidder must suffer the consequences of its reliance upon oral instructions or explanations offered by the procuring activity. See, e.g., Klean-Vu-Maintenance, Inc., B-194504, February 22, 1979, 79-1 CPD 126. In any event, even if Pepsi had been erroneously led to believe that it could offer root beer despite the clear language of the solicitation and that this resulted in the rejection of its bid, it was not prejudiced since the solicitation was in fact canceled and the requirement resolicited.

We also need not address the protester's challenge to the contracting officer's determination that its bid was nonresponsive for failure to include prices for item 0007, since we have found the Army's rejection of the protester's bid to be reasonable for the reasons stated above.

Since we have concluded that the agency's rejection of the Pepsi bid under the original solicitation was proper, we have no reason to question the agency's cancellation of the original solicitation and its subsequent award to another bidder under the resolicitation.

The protest is denied.


Comptroller General
of the United States